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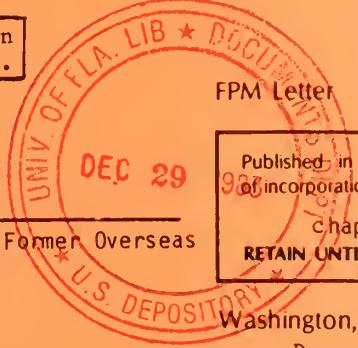
FPM Letter

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SUBJECT: Noncompetitive Appointment of Certain Former Overseas Employees Under Executive Order 12362



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Chapter 315

RETAIN UNTIL SUPERSEDED

Washington, D. C. 20415

December 15, 1983

Heads of Departments and Independent Establishments:

1. The Office of Personnel Management is publishing final guidelines on the noncompetitive appointment of former overseas employees under Executive Order 12362.
2. Executive Order 12362 is designed to improve employment opportunities for family members of military and other U.S. Government personnel who are employed while accompanying their sponsors on overseas assignment. It enables spouses and other family members who work a total of 24 months in overseas positions after January 1, 1980, and meet certain other requirements to qualify for direct appointments to competitive civil service positions when they return to the United States. Interim guidelines on making appointments under this authority were issued in FPM letter 315-21, dated July 22, 1982.
3. The final guidelines contain several important changes in the criteria eligibles must meet for appointment under the Order. An earlier requirement that eligibles must be family members of active duty military or civilian personnel at the time they apply for employment in the United States has been dropped. Under the new guidelines, which are effective immediately, eligibles need only have been considered official U.S. Government dependents during the period of their overseas employment. This change was made to eliminate hardship and inequity for family members who earn eligibility overseas but whose sponsors subsequently retire or die before the family member can apply for employment in the United States.
4. In another change, OPM has determined that family members who work under the Berlin Tariff Agreement can qualify for civil service employment on the same basis as employees who serve in other overseas duty locations. The eligibility of U.S. workers in Berlin for employment under the Executive order has been in doubt because of the unique method used to pay such employees.
5. To insure that only well qualified overseas employees are eligible for employment under the program, the final guidelines require eligibles to have a fully successful or better performance rating for overseas service performed after January 1, 1984, in order to use it to meet the service requirements of the Order.
6. The guidelines also clarify the requirement that family members must accompany their sponsors while they complete the 24 months of overseas employment needed to qualify under the Order. Recognizing that sponsors may be temporarily deployed away from their permanent overseas station on ships or to other posts to meet diplomatic or military requirements, the new guidelines only require eligibles to reside in the overseas area while their sponsor is officially assigned to an overseas post of duty. They do not require the family member to have physically resided with the sponsor at all times or to have travelled with the sponsor to or from the overseas area.

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7. The new guidelines may make it possible for some individuals who were initially determined to be ineligible for employment under E.O. 12362 to now qualify for direct civil service appointment. The new guidelines apply to any individual who seeks noncompetitive appointment under E.O. 12362. This includes former overseas employees who were previously determined to be ineligible for appointment. Such individuals may now be appointed under E.O. 12362 if they meet the eligibility criteria in the new guidelines, including the requirement that eligibles be appointed within 2 years of returning to the United States from the overseas tour of duty during which they acquired eligibility.

8. The new guidelines are being incorporated in the Code of Federal Regulations and are also being published as a Federal Personnel Manual installment to chapters 301, 315, and 316. The complete text of the chapter 315 material appears as an attachment to this letter.



Donald J. Devine
Director

Attachment

SUBCHAPTER 6. CAREER OR CAREER-CONDITIONAL APPOINTMENT UNDER
SPECIAL AUTHORITIES

6-13. APPOINTMENT OF FORMER OVERSEAS EMPLOYEES

a. Eligibility. Under the Authority of Executive Order 12362, a former overseas employee may be appointed on a career-conditional basis noncompetitively to a competitive service position in the United States provided that he or she:

- (1) Is a citizen of or owes permanent allegiance to the United States;
- (2) Accumulated 24 months of creditable overseas service in an appropriated fund position(s) under an overseas local hire appointment(s) within any 10-year period beginning after January 1, 1980;
- (3) Received a fully successful or better performance rating (or equivalent) for the period of creditable overseas service (this requirement applies to service accrued after January 1, 1984);
- (4) Was a family member of a Federal civilian employee or of a member of a uniformed service (the civilian or uniformed sponsor) who was officially assigned to the overseas area during the period of creditable overseas service;
- (5) Accompanied the civilian or uniformed sponsor on official assignment in the overseas area while serving in the overseas position during the period of creditable overseas service.
- (6) Is appointed within 2 years of returning to the United States from the overseas tour of duty during which he or she acquired eligibility; and
- (7) Meets all qualification requirements for the position in the United States for which he or she is applying.

b. Definitions. (1) "Accompanied the civilian or uniformed sponsor on official assignment in the overseas area" means a family member residing in the overseas area while their sponsor is officially assigned to an overseas post of duty. This definition does not require the family member to have physically resided with the sponsor at all times or to have traveled with the sponsor to or from the overseas area.

(2) "Creditable overseas service" means the period of employment when the employee was serving under a local hire appointment(s) with a fully successful or better (or equivalent) performance rating and residing in the overseas area as a family member of a Federal civilian employee or member of a uniformed service on official assignment.

(3) "Family member" means a spouse or unmarried child (under 23 years of age) of a member of a uniformed service or Federal civilian employee officially assigned to the overseas area.

(4) "Federal civilian employee" means an employee of the executive, judicial, and legislative branches of the Government of the United States who is officially assigned to the overseas area and serves in an appropriated fund position.

(5) "Local hire appointments" are excepted or competitive service appointments made from applicants residing in the overseas area which are not actually or potentially permanent. For purposes of this subpart only, this definition includes nonpermanent employment as a local national employee paid from appropriated funds, or under 50 U.S.C. 403j, Public Law 86-36, or the Berlin Tariff Agreement, overseas limited appointments under 5 CFR 301.201, nonpermanent excepted appointments under Schedule A 213.3106(b)(6) or Schedule A 213.3106(d)(1), or an "American Family Member" or "Part-time--Intermittent--Temporary" appointment in U.S. diplomatic establishments.

(6) "Member of a uniformed service" means personnel of the armed forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration officially assigned to the overseas area.

(7) "Overseas area" means locations outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

(8) "Sponsor" means a member of a uniformed service or civilian employee on official assignment to the overseas area who is the spouse or parent of the family member.

(9) "United States" means the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

c. Determining creditable overseas service. To be creditable for non-competitive appointment under E.O. 12362, 24 months of overseas employment must have been served:

(1) Within any 10-year period after January 1, 1980; and

(2) Under a local hire appointment(s) as defined in paragraph b(5) of this section; and

(3) While the individual was physically residing in the overseas area as a family member of a civilian employee or member of a uniformed service who was officially assigned to the overseas area; and,

(4) With a fully successful or better (or equivalent) performance rating for service accrued after January 1, 1984.

There is no authority to waive any of the above requirements. Service computation procedures of FPM supplement 296-33 are applicable in determining whether former overseas employees meet the length of service requirements for noncompetitive appointment. Creditable service may have been under several different appointments and need not have been continuous. Periods of leave without pay which occurred after the employee left the overseas area are not considered creditable overseas service for purposes of earning noncompetitive appointment eligibility. Service under certain forms of overseas local hire appointments, while creditable for purposes of gaining noncompetitive appointment eligibility under E.O. 12362 may not, in some cases, be considered creditable Federal service for other purposes (e.g., retirement, leave accrual, etc.). Before establishing an E.O. 12362 appointee's service computation date, agencies should consult the appropriate section of the Federal Personnel Manual to determine whether the appointee's overseas service is creditable for these other purposes.

d. Overseas local hire appointments. Overseas local hire appointments are those forms of non-permanent employment designated in paragraph b(5) of this section. Non-permanent appointments in both the competitive and excepted service are usually indicated by placement of the employee in tenure group "0" or "3". Appointments in the competitive or excepted service under which the employee is assigned to tenure group 1 or 2 are not considered local hire appointments and cannot be used to meet service requirement for appointment under E.O. 12362. The requirement that local hire appointments be made from applicants residing in the overseas area does not preclude agencies from considering candidates, whose sponsors are being assigned overseas, in advance of their arrival in the overseas area.

e. Documentation. Periods of creditable overseas service and date of return to the United States must be documented by the E.O. 12362 eligible when applying for employment in the United States. Copies of personnel actions, travel orders and performance ratings may be used for this purpose.

f. Documentation of overseas local hire employment with national security organizations. In rare cases, security considerations may preclude the disclosure of specific information on a former employee's overseas service. Where such employees meet the requirements for noncompetitive appointment under Executive Order 12362, the overseas employing agency will issue the employee a certification to this effect. Agencies in the United States may make noncompetitive appointments on the basis of this certification.

g. Performance rating. For service after January 1, 1984, to be creditable for noncompetitive appointment, the employee must have received a performance rating of fully successful or better (or equivalent). Periods of overseas employment after January 1, 1984 for which the employee did not receive a fully successful or better (or equivalent) performance rating are not considered as creditable overseas service for purposes of meeting noncompetitive appointment eligibility requirements under this subchapter. Ratings must be determined in accordance with the agency's performance appraisal plan established under chapter 43 of Title 5, U.S. Code, unless the overseas agency is exempt from provisions of this chapter.

h. Status as a family member. Eligibles must have been family members of U.S. Government civilian or military personnel during the period of creditable overseas service. No credit can be given for periods of overseas service when the individual was not a family member. However, eligibles need not be family members of U.S. personnel or unmarried and under 23 years of age at the time they apply for noncompetitive appointment in the United States.

i. Requirement for U.S. citizenship. The requirement that eligibles be United States citizens or otherwise owe permanent allegiance to the United States applies only at the time they apply for noncompetitive appointment in the United States. Individuals who are otherwise eligible for noncompetitive appointment, but who were not U.S. citizens during the period of overseas employment, can be given noncompetitive appointments if they have since become U.S. citizens. Natives of American Samoa are the only noncitizens who as a group owe permanent allegiance to the United States.

j. Qualifications requirements. Eligibles may be directly appointed to a position in any occupation and grade level for which they qualify, subject to meeting qualification requirements and time-in-grade restrictions. Eligibles must meet all qualification standards including any written test requirement for the position for which they are applying in the United States. However, if the eligible meets the qualification requirements for a higher grade level in the same occupational series (for which he or she is applying) which does not require a written test, he or she is considered to meet the qualification requirements for all lower graded positions in the same series. Written test requirements for lower graded positions in the same series may be waived by the agency in such cases.

k. Time-in-grade restrictions. Time-in-grade restrictions (FPM chapter 300) apply to employees appointed under this authority who have served in a General Schedule position during the previous year.

l. Appointment eligibility. Eligibles may receive more than one appointment under this authority as long as all appointments are made within 2 years of returning to the United States. Legal authority code and legal authority to be shown on appointments are ZJK, E.O. 12362. Eligibles may also receive noncompetitive term or temporary limited appointments (FPM chapter 316). Individuals who have reinstatement eligibility from a previous career or career-conditional appointment, as well as current eligibility for appointment under E.O. 12362, may be considered for occupations and grade levels on the basis of their E.O. 12362 eligibility. When the appointment is made in such cases, however, it should be identified as a reinstatement action.

m. Period of noncompetitive appointment eligibility upon return to the United States. Eligibles may be appointed within two years of their return to the United States following an overseas tour of duty during which they acquired eligibility by meeting the requirements of paragraphs a.(2) through (5) of this section. Eligibles can use creditable overseas service earned during

previous overseas tours of duty for this purpose as long as the entire 24 months of creditable overseas service was earned within a 10-year period beginning not earlier than January 1, 1980. In addition, at least some portion of the creditable overseas service must have been earned during the individual's most recent overseas tour.

n. Status and tenure. Upon nontemporary appointment, the former overseas employee is a career-conditional employee (except in the case of reinstatement eligibles described above). Both initial appointment probationary period and the 3-year period for conversion to career appointment begin with the date of the career-conditional appointment. Service under a local hire appointment overseas is not creditable for either the probationary period or the service requirement for conversion to career tenure.

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